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concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
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NOTICE

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 74-156)

Convertible game tables—Restriction on importation

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 16, 1974.

There is hereby published for direction and guidance of Customs officers and others concerned the following direction from the President, issued to the Secretary of the Treasury on May 2, 1974, directing the Secretary to forbid the entry into the United States of convertible game tables and table tops therefor made in accordance with the registered patent claim:

THE WHITE HOUSE
WASHINGTON

May 2, 1974.

DEAR MR. SECRETARY:

In its complaint ATI Recreation, Inc. (now All-Tech Industries, Inc.), of Miami Lakes, Florida, requested relief under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. Sec. 1337), from alleged unfair acts and unfair methods of competition in the importation and domestic sale of convertible game tables which, among other allegations, are said to be made in accordance with the claim(s) of U.S. Patent No. 3,711,099 (Tariff Commission Investigation 337-34).

Upon the facts submitted to me by the United States Tariff Commission (T.C. Publication 652), I believe that the products are offered or sought to be offered for entry into the United States in violation of section 337.

Accordingly, by authority of subsection (f) of section 337, pending further advice from this office, I direct that you

forbid the entry into the United States of convertible game tables (whether imported assembled or not assembled) made in accordance with the claim(s) of U.S. Patent No. 3,711,099, or the table top(s) therefor, except where (1) the importation is made under bond, or (2) the importation is made under license of the registered owner of said patent, or (3) in the case of the table top(s), either table top (if imported separately) is for sale or for use other than the combination purposes covered by the patent and the importer so certifies.

Sincerely,

/s/ RICHARD NIXON

THE HONORABLE GEORGE P. SCHULTZ
Secretary of the Treasury
Washington, D.C. 20220

The restricted articles are those convertible game tables made in accordance with the claims of U.S. Patent No. 3,711,099, and table tops therefor, fully described on pages A-81 through A-83 of the report of the United States Tariff Commission (T.C. Publication 652, Washington, D.C., March 1974). The restricted articles are generally described as follows:

Novel table assembly which includes, in combination, a single table having a plurality of tops thereby to permit the utilization of the table as a normal flat top type table as well as a game table, having at least two different game playing surfaces.

A combination flat top, game table and bumper pool game table assembly.

These articles are generally classified under item 734.40, TSUS.
(RES-2-R :E :R)

VERNON D. ACREE,
Commissioner of Customs.

[Published in the Federal Register May 17, 1974 (39 FR 17569)]

(T.D. 74-157)

Antidumping—Potassium chloride from Canada

The Secretary of the Treasury makes public a modification of the finding of dumping with respect to potassium chloride, otherwise known as muriate of potash, from Canada. Section 153.43, Customs Regulations, amended

DEPARTMENT OF THE TREASURY
Washington, D.C., May 15, 1974.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 153—ANTIDUMPING

On January 9, 1974, there was published in the Federal Register (39 F.R. 1471) a "Notice of Tentative Determination to Modify or Revoke Dumping Finding" with respect to potassium chloride, otherwise known as muriate of potash, from Canada. A finding of dumping applicable to this merchandise was published as T.D. 69-265, in the Federal Register of December 19, 1969 (34 F.R. 19904).

The above-mentioned notice set forth the reasons for the proposed modification, and interested parties were afforded an opportunity to make written submissions or request the opportunity to present oral views in connection therewith.

No written submissions or requests to present oral views having been received, I hereby determine that, for the reasons stated in the "Notice of Tentative Determination to Modify or Revoke Dumping Finding," potassium chloride, otherwise known as muriate of potash, from Canada is no longer being, nor is it likely to be, sold in the United States at less than fair value by Kalium Chemicals, Limited; Potash Company of Canada, Limited; Potash Company of America; International Minerals and Chemical Corporation; and CF Industries, Inc., and the finding of dumping with respect to such merchandise is hereby modified to exclude shipments by these companies. Accord-

ingly, section 153.43 of the Customs Regulations is amended to show the exclusion of potassium chloride produced and sold by these five companies from the finding of dumping:

<i>Merchandise</i>	<i>Country</i>	<i>T.D.</i>	<i>Modified by</i>
Potassium chloride, otherwise known as muriate of potash, except that produced and sold by U.S. Borax & Chemical Co., Kalium, Saskatchewan, Canada; Kalium Chemicals, Limited, Regina, Saskatchewan, Canada; Potash Company of Canada, Limited, Lanigan, Saskatchewan, Canada; Potash Company of America, Saskatoon, Saskatchewan, Canada; International Minerals and Chemical Corporation, Libertyville, Illinois, U.S.A.; and CF Industries, Inc., Chicago, Illinois, U.S.A.	Canada	69-265	74-157

(APP-2-04)

D. R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the Federal Register May 22, 1974 (39 FR 17944)]

T.D. 74-158

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 17, 1974.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR, Part 159, Subpart C).

Hong Kong dollar:

For the period May 6 through May 10, 1974, rate of \$0.1975.

Iran rial:

For the period May 6 through May 10, 1974, rate of \$0.0149.

Philippines peso:

May 6, 1974-----	\$0. 1485
May 7, 1974-----	. 1490
May 8, 1974-----	. 1495
May 9, 1974-----	. 1495
May 10, 1974-----	. 1495

Singapore dollar:

May 6, 1974-----	\$0. 4145
May 7, 1974-----	. 4170
May 8, 1974-----	. 4155
May 9, 1974-----	. 4160
May 10, 1974-----	. 4170

Thailand baht (tical):

For the period May 6 through May 10, 1974, rate of \$0.0495.

(LIQ-3-0 : D : T)

R. N. MARRA,
Director,
Duty Assessment Division.

(T.D. 74-159)

Synopses of drawback decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., May 21, 1974.

The following are synopses of drawback rates and amendments issued August 27, 1968, to May 9, 1974, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations; and approval under section 22.6, Customs Regulations.

(DRA-1-09)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(A) *Automobiles and automobile subassemblies.*—T.D. 54882-J, as amended, and particularly as amended by T.D.'s 67-272-N, 73-324-D,

and 74-149-B, covering, among other things, automobiles and automobile parts manufactured under section 1313(b) by American Motors Corp., Detroit, Mich., at its Kenosha, Wis., factory, with the use of galvanized sheet steel, further *amended* to cover automobiles and automobile subassemblies manufactured under section 1313(b) by the said company at its above factory with the use of automobile transmissions.

Amendment effective on articles manufactured and exported on and after July 1, 1974.

Supplemental statements of March 7 and April 17, 1974, forwarded to Regional Commissioner of Customs, Chicago, Ill., May 8, 1974.

(B) *Bladex, wettable powder.*—T.D. 73-124-H, covering Bladex wettable powder manufactured under section 1313(b) by Coahoma Chemical Co., Inc., Clarksdale, Miss., with the use of technical Bladex herbicide, *amended* to cover the said articles manufactured by Riverside Chemical Co., Memphis, Tenn., *successor*.

Amendment effective as to articles exported on and after December 1, 1972, the date of succession.

Amendment issued by Regional Commissioner of Customs, Houston, Tex., April 11, 1974.

(C) *Chrome chemicals.*—T.D. 53568-A, as amended by T.D.'s 54153-A, 55788-B, and 66-34-B, covering, among other things, chrome chemicals manufactured under section 1313(b) by Diamond Alakli Co., Cleveland, Ohio, at its Cliffwood and Kearney, N.J. factories, with the use of sodium bichromate and chromic acid, further *amended* to cover such articles manufactured at the said factories under section 1313(b) by Diamond Shamrock Corp., Cleveland, Ohio, *successor*.

Amendment effective on articles exported on and after December 19, 1967, the date of succession.

Amendment issued by Regional Commissioner of Customs, New York, N.Y., August 27, 1968.

(D) *Confectionery.*—T.D. 53472-A, as amended by T.D.'s 55129-C, and 71-98-G, covering confectionery manufactured under section 1313(b) by Delson Candy Co., Inc., Englewood, N.J., at its Englewood, N.J., factory, with the use of hard refined and liquid refined sugar, further *amended* to cover the foregoing articles manufactured at the said factory by Consolidated Foods Corp., Chicago, Ill., *successor*.

Amendment effective on articles exported on and after October 2, 1971, the date of succession.

Amendment issued by Regional Commissioner of Customs, New York, N.Y., February 13, 1974.

(E) *Cylinders, gas, seamless; circles, steel; other cylinders; and components of cylinders.*—T.D. 56495-R, as amended by T.D. 68-185-F, covering, among other things, steel cylinders manufactured under section 1313(b) by Pressed Steel Tank Co., Inc., Milwaukee, Wis., at its Milwaukee, Wis., and Downington, Pa., factories, with the use of steel sheet and steel plate, further *amended* to cover seamless gas cylinders manufactured with the use of steel blooms and/or billets; steel circles manufactured with the use of steel strip, sheet, and/or plate; and other cylinders and components of cylinders manufactured with the use of steel circles, all the foregoing manufactured under section 1313(b) by the company at its two Milwaukee, Wis., factories.

Amendment effective on articles manufactured and exported on and after January 8, 1969.

Supplemental statements of October 15, 1973, and March 13, 1974, forwarded to Regional Commissioner of Customs, Chicago, Ill., May 6, 1974.

(F) *Dyestuffs.*—T.D. 55580-N, as amended by T.D. 69-246-L, covering dyestuffs manufactured under section 1313(b) by Dyes & Chemicals Div., Crompton & Knowles Corp. (formerly Althouse Div., Crompton & Knowles Corp.), Fairlawn, N.J., at its Reading, Pa., factory, with the use of dye intermediates, further *amended* to cover dye-stuffs manufactured by the said company at its Reading and Gilbralter, Pa., factories, with the use of additional dye intermediates.

Amendment effective on articles manufactured on and after January 2, 1966, and exported on and after February 1, 1966.

Manufacturer's statements of August 13, 1973, and March 1, 1974, forwarded to Regional Commissioner of Customs, New York, N.Y., May 9, 1974.

(G) *Excavators, hydraulic.*—Manufactured under section 1313(a) by Liebherr-America, Inc., Newport News, Va., with the use of various-imported components.

Rate effective on articles manufactured on and after February 1, 1972, and exported on and after December 6, 1972.

Rate issued by Regional Commissioner of Customs, Baltimore, Md., September 28, 1973.

(H) *Fruits, fruit cocktail, fruit and vegetable nectars, and catsup.*—T.D. 55309-F, covering the foregoing products manufactured under section 1313(b) by Bercut-Richards Packing Co., Sacramento, Calif., with the use of dry or liquid sugar, *amended* to cover the said

products manufactured by Sacramento Foods, Div. of Borden Foods, Borden, Inc., Columbus, Ohio, *successor*.

Amendment effective on articles exported on or after October 31, 1968, the date of succession.

Amendment issued by Regional Commissioner of Customs, San Francisco, Calif., October 17, 1973.

(I) *Heating and air conditioning units*.—Manufactured under section 1313(a) by Accessory Controls and Equipment Corp., Windsor, Conn., with the use of imported diesel engines.

Rate effective on articles manufactured on and after October 1, 1973, and exported on and after November 1, 1973.

Rate issued by Regional Commissioner of Customs, Boston, Mass., February 27, 1974.

(J) *Locomotives, diesel powered*.—Manufactured under section 1313(a) by Plymouth Locomotive Div., Banner International, Inc., Stamford, Conn., at its Plymouth, Ohio, factory, with the use of imported diesel locomotive engines and/or other component parts, such as wheels, gauges, instruments, steel forms or shapes, drive shafts or coupling shafts.

Rate effective on articles manufactured on and after March 1, 1973, and exported on and after April 6, 1973.

Rate issued by Regional Commissioner of Customs, New York, N.Y., October 10, 1973.

(K) *Material handling and moving equipment, and parts*.—T.D. 53712-D, as amended by T.D. 53931-H, covering, among other things, motor trucks manufactured under section 1313(b) by International Harvester Co., Chicago, Ill., at its various factories, with the use of diesel engines and parts thereof, further *amended* to cover material handling and moving equipment manufactured under section 1313(a) by the company at its Libertyville, Ill., factory, with the use of imported gasoline engines and tractor chassis.

Amendment effective on articles manufactured on and after August 15, 1968, and exported on and after September 9, 1968.

Amendment issued by Regional Commissioner of Customs, Chicago, Ill., March 25, 1970.

(L) *Peptizer (Endor)*.—Manufactured under section 1313(a) by E. I. du Pont de Nemours & Co., Inc., Wilmington, Del., at its Deepwater, N.J., factory, with the use of imported zinc pentachlorophenyl-thiolate (oiled).

Rate effective on articles manufactured on and after January 1, 1973, and exported on and after March 9, 1973.

Rate issued by Regional Commissioner of Customs, Baltimore, Md., January 8, 1974.

(M) *Phonographs*.—Manufactured under section 1313(a) by Unelco Electronics Corp., Baltimore, Md., at its Columbia, Md., factory, with the use of imported components.

Rate effective on articles manufactured on and after March 1, 1972, and exported on and after May 1, 1972.

Rate issued by Regional Commissioner of Customs, Baltimore, Md., October 12, 1973.

(N) *Piece goods, cotton, mercerized, bleached and/or dyed*.—T.D. 51847-F, as amended by T.D. 55827(2), covering the foregoing articles manufactured under section 1313(a) by Rockland Bleach and Dye Works Co., Inc., Brooklandville, Md., with the use of imported cotton piece goods in the greige, further *amended* to cover a change of the company's name to Rockland Industries, Inc.

Amendment effective on articles exported on and after August 1, 1973, the date of the name change.

Amendment issued by Regional Commissioner of Customs, New York, N.Y., April 9, 1974.

(O) *Plastics, synthetic in pellet form*.—T.D. 69-240-T, as amended by T.D.'s 71-201-K and 72-338-F, covering synthetic plastics in pellet form manufactured under section 1313(a) with the use of imported titanium dioxide and under section 1313(b) with the use of titanium dioxide and also with the use of chrome green medium, light chrome yellow and paliogreen red GG by Ampacet Corp., Mt. Vernon, N.Y., further *amended* to cover the said articles manufactured by the company under section 1313 (a) and (b) at its additional factory located in Terre Haute, Ind.

Amendment effective on articles manufactured on and after October 17, 1972, and exported on and after December 20, 1972.

Amendment issued by Regional Commissioner of Customs, New York, N.Y., January 24, 1974.

(P) *Plywood panels and plywood doorskins, prefinished*.—T.D. 66-54-Q, as amended by T.D.'s 69-246-V, 71-167-Q, and 72-116-V, covering the foregoing products manufactured under section 1313(a) by Vanor Port-Panel Co., Inc., Vancouver, Wash., at its Vancouver, Wash., and Norfolk, Va., factories, with the use of imported unfinished

plywood panels and unfinished plywood doorskins, further *amended* to cover such products manufactured by Vanport Industries, Inc., *successor*.

Amendment effective on articles exported on and after September 1, 1973, the date of succession.

Amendment issued by Regional Commissioner of Customs, San Francisco, Calif., April 4, 1974.

(Q) *Pulp, bleached kraft (sulfate) wood.*—Manufactured under section 1313(b) by Louisiana-Pacific Corp., Portland, Ore., at its Samoa, Calif., factory, with the use of sodium chlorate.

Rate effective on articles manufactured on and after October 31, 1973, and exported on and after November 11, 1973.

Manufacturer's drawback statements of January 22, March 21, and April 12, 1974, forwarded to Regional Commissioner of Customs, San Francisco, Calif., May 1, 1974.

(R) *Resins (stabilized), polypale, dymerex and 861.*—T.D. 73-324-T, covering resins (stabilized), polypale, dymerex and resin 861, manufactured under section 1313(b) by Hercules, Inc., Wilmington, Del., at its Hattiesburg, Miss., and Burlington, N.J., factories, with the use of rosins, *amended* to cover the said articles manufactured at additional factories located at Savannah, and Brunswick, Ga.; Portland, Ore.; Kalamazoo, Mich.; and Milwaukee, Wis.

Amendment effective on articles manufactured on and after August 30, 1973, and exported on and after November 13, 1973.

Amendment issued by Regional Commissioner of Customs, Baltimore, Md., March 8, 1974.

(S) *Sodium carboxymethylcellulose (CMC).*—T.D. 67-126-N, as amended by T.D.'s 68-68-M, 72-126-F, and 73-236-S, covering, among other things, sodium carboxymethylcellulose (CMC) manufactured under section 1313(b) by Hercules, Inc., Wilmington, Del., at its Hopewell, Va., factory, with the use of monochloroacetic acid flake (MCA), *amended* to cover the said products manufactured at an additional factory located at Harbor Beach, Mich.

Amendment effective on articles manufactured on and after May 26, 1973, and exported on and after December 20, 1973.

Amendment issued by Regional Commissioner of Customs, Baltimore, Md., March 8, 1974.

(T) *Steel bars and coils, cold drawn.*—Manufactured under section 1313(a) by Baron Drawn Steel Corp., Toledo, Ohio, with the use of imported hot rolled steel bars and coils.

Rate effective on articles manufactured on and after January 1, 1970, and exported on and after December 17, 1970.

Rate issued by Regional Commissioner of Customs, Chicago, Ill., April 1, 1974.

(U) *Stones, precious and semi-precious, recut and faceted.*—Manufactured under section 1313(a) by Reginald C. Miller, Inc., New York, N.Y., with the use of imported precious and semi-precious stones in native-cut form.

Rate effective on articles manufactured and exported on and after November 17, 1972.

Rate issued by Regional Commissioner of Customs, New York, N.Y., May 21, 1973.

(V) *Turbine generators.*—Manufactured under section 1313(a) by North American Turbine Corp., Houston, Tex., with the use of imported gas turbines.

Rate effective on articles manufactured on and after June 2, 1972, and exported on and after June 5, 1972.

Rate issued by Regional Commissioner of Customs, Houston, Tex., October 4, 1973.

(W) *Wall panels, vinyl overlay panels, and paper overlay panels, prefabricated.*—Manufactured under section 1313(a) by Western States Plywood Corp., Santa Fe Springs, Calif., with the use of imported lauan plywood and hardboard.

Rate effective on articles manufactured on and after October 17, 1973, and exported on and after October 19, 1973.

Rate issued by Regional Commissioner of Customs, Los Angeles, Calif., December 27, 1973.

(X) *Weed killer compounds.*—T.D. 55269-N, as amended by T.D.'s 67-157-A, and 68-278-I, covering, among other things, chemical weed killer compounds manufactured under section 1313(b) by Diamond Alkali Co., Cleveland, Ohio, at its Newark, N.J., and Green Bayou, Tex., factories, with the use of weed killer compound intermediates, further *amended* to cover such articles manufactured under section 1313(b) by Diamond Shamrock Corp., Cleveland, Ohio, *successor*.

Amendment effective on articles exported on and after December 19, 1967, the date of succession.

Amendment issued by Regional Commissioner of Customs, New York, N.Y., August 27, 1968.

(Y) *Wool top and sorted grease wool.*—Manufactured under section 1313(b) by Ataka America, Inc., New York, N.Y., with the use of grease wool through its agents operating under rates of drawback established under section 1313(b).

Rate effective on articles manufactured and exported on and after January 18, 1972.

Manufacturer's statement of November 29, 1973, forwarded to Regional Commissioner of Customs, Boston, Mass., April 5, 1974.

(Z) *Yttrium oxide.*—Manufactured under section 1313(a) by Molybdenum Corp. of America, White Plains, N.Y., at its Louviers, Colo., factory, with the use of imported yttrium oxide ore concentrates.

Rate effective on articles manufactured on and after May 1, 1973, and exported on and after July 30, 1973.

Rate issued by Regional Commissioner of Customs, Houston, Tex., December 28, 1973.

Approval under section 22.6, Customs Regulations

(1) *Bags, cotton and burlap.*—T.D.'s 52338-B, 55003(1) and 55325(1), covering cotton and burlap bags manufactured under section 1313(a) by Langston Bag Co., Memphis, Tenn., with the use of imported jute burlap and cotton sheeting, *amended to cover* (1) the said articles manufactured at an additional factory located at Crowley, La., and (2) a change in name to Langston Companies, Inc.

Amendment effective on the articles covered by (1), above, which are manufactured on and after April 1, 1971, and exported on and after April 28, 1971, and (2), above, which are exported on and after April 27, 1973, the date the name of the corporation was changed.

Manufacturer's supplemental statement of October 8, 1973, approved by Regional Commissioner of Customs, New Orleans, La., November 8, 1973.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1118)

THE UNITED STATES v. JOHN V. CARR AND SON, INC. 5538 (— F. 2d —)

United States Court of Customs and Patent Appeals, May 16, 1974

Appeal from United States Customs Court, C.D. 4377

[Affirmed.]

Irving Jaffe, Acting Assistant Attorney General, Robert Greenspan, Walter H. Fleischer, Anthony J. Steinmeyer, for the United States.

Barnes, Richardson & Colburn, attorneys for appellee. E. Thomas Honey and Peter J. Fitch, of counsel.

[Oral argument April 1, 1974, by Mr. Greenspan and Mr. Honey]

Before MARKEY, Chief Judge, RICH, BALDWIN, LANE, and MILLER, Associate Judges.

BALDWIN, Judge.

This appeal is from the decision and judgment of the Customs Court, Third Division, sustaining appellee's protest concerning the classification of certain fish hooks and their tin containers. The opinion of the Customs Court appears at 69 Cust Ct. 78, C.D. 4377, (1972). The court held that the fish hooks qualified for duty-free entry under item 800.00, TSUS, as returned American products which had not "been advanced in value or improved in condition by any process of manufacture or other means while abroad."

After a thorough consideration of appellant's arguments, we have concluded that we are in full agreement with the opinion of the Customs Court, and we adopt it as our own. The judgment is *affirmed*.

MILLER, Judge, dissenting.

I am persuaded that the involved merchandise, having been assembled abroad from bulk into individually-packaged assortments of forty

hooks of eight different kinds each to meet the requirements of retail purchasers in this country, was substantially advanced in value and did not, therefore, qualify for classification under Schedule 8, Part 1, Subpart A, item 800.00, which provides as follows:

800.00 Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad.----- Free

I agree with appellant that the holding of the Customs Court effectively reads out of the statute the broad phrase "or other means," as does the majority here. I further agree that the test under item 800.00 is economic (advanced in value) and not merely physical (improved in condition), and that appellee did not sustain its burden of proving that the involved merchandise was not advanced in value or improved in condition by manufacture or other means. As discussed below, the words "other means" were used by the Congress for the purpose of limiting the duty-free entry of merchandise to compete with domestic industry and labor. Liberalizing the tariff laws by expanding the duty-free provisions is a Congressional prerogative.

The phrase "or other means" has been in item 800.00 and its predecessor provisions since the Tariff Act of 1890, enacted by the 51st Congress. It originated during the 50th Congress as an amendment by the Senate Finance Committee to a House-passed bill (H.R. 9051).¹ Under the free list, the House bill had provided:

Articles the growth, produce, and manufacture of the United States, when returned after having been exported, without having been advanced in value by any process of manufacture or by labor thereon;

As amended by the Senate Finance Committee, the provision read:

Articles the growth, produce, and manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means;

Thus, the Committee *added* the physical test, "or improved in condition," and replaced the words "by labor thereon" with "other means," obviously a broader phrase which would include labor.

The Senate passed the amended H.R. 9051 on January 22, 1889. The House failed to act, and the bill died at the end of the 50th Congress, April 2, 1889.

¹ S. Rep. 2332, 50th Cong. 1st Sess. (1888). The report stated that the House bill had been given a "thorough examination" and that the Committee was "convinced of its inadequacy".

The 51st Congress commenced December 2, 1889, and the follow-on legislation to the above-referred to H.R. 9051 was introduced by the House Ways and Means Committee as H.R. 9416 on April 16, 1890. The new bill contained the above-quoted provision as amended by the Senate, and there was no attempt to change it as the bill progressed through the two houses and was finally enacted October 1, 1890, as the Tariff Act of 1890.²

It should be noted that during the 50th Congress, the Senate was in control of those favoring more protection, and the House was in control of those favoring less protection to domestic industry. The protective tariff was a principal issue in the elections of 1888, with those favoring more protection winning control of both the Senate and the House.³ Thus, the legislative history of the words "other means" makes it clear that protection of domestic industry and labor was intended; also that the test for free entry was not merely the physical improved in condition," but, alternatively, the economic "advanced in value" as well. Not only is the intent of Congress clear, but the words expressing that intent are clear.

Appellee cites *Border Brokerage Co. Inc. v. United States*, 65 Cust. Ct. 50, C.D. 4052, 314 F. Supp. 788, (1970), relied upon by the Customs Court in its opinion. The case involved 40-pound cartons of tomatoes grown in Florida which were shipped by rail to Canada. There the tomatoes were unloaded, sorted, graded, repacked in 18-pound cartons, and then imported into the United States where they were sold. It seems clear that the repacking was for purposes of *wholesale*. The Customs Court held that the treatment given the tomatoes in Canada did not advance their value or improve their condition. Whether individual wrapping of the tomatoes would have made a difference in the court's decision cannot be determined, but it may be significant that the court noted that no cleaning, wiping, or individual wrapping was involved. In any event, the court said:

Hence, it would appear from the principles evolved in the *Hallauer* and *Oakville* cases, that the test to be applied in item 800.00 cases is whether the merchandise of American origin has itself (apart from its container) been the object of advancement in value or improvement in condition while abroad.

The case of *Wilbur G. Hallauer v. United States*, 40 CCPA 197, C.A.D. 518 (1953), involved apples transported in 35-pound boxes to Canada, where they were wiped (to remove an insecticide spray residue), polished, graded and wrapped. They were returned to the United States in 42-pound boxes. Obviously wholesale prices were

² S.L. Vol. 26, Ch. 1244 (1890).

³ United States Tariff Commission, "The Tariff and Its History," U.S. Government Printing Office, 1934.

involved both ways. This court held that the treatment given the apples was sufficient to convert the apples *per se* into a different unit of merchandise and constituted "alterations" within the meaning of paragraph 1615(g) of the Tariff Act of 1930.⁴ We are not here concerned with "alterations," so this case is inapposite.

The case of *United States v. Oakville Company*, 56 CCPA 1, C.A.D. 943, 402 F. 2d 1016 (1968), involved common pins which were exported in bulk to Canada, along with one-inch wide paper tape rolls 17 or 18 inches in diameter. In Canada the paper tape and the pins were used to make new rolls, 5,000 pins to the roll, 5½ inches in diameter, wound on wooden spools made in Canada. The new rolls were returned to the United States for use by one of Oakville's customers in ticketing machines which attached price tags to garments. The government argued that the pins underwent a manufacturing process in Canada and that what was imported was a different commercial entity from what was exported, citing the case of *Winthrop-Stearns, Inc. v. United States*, 38 Cust. Ct. 1, C.D. 1835 (1956).⁵ This court agreed that what was imported was "a different commercial entity" and said that "from the standpoint of commercial reality" the paper tape and the pins had been consumed in making "an entirely different article" ("pins-in-rolls"), so that their value as an article of commerce *per se* had been destroyed, not advanced. It concluded that the "pins-in-rolls" must be assessed with duty as an entity, but that the paper tape and the pins were entitled to free entry as American goods returned and that their value should be subtracted from the total value of the pins-in-rolls.

Unlike the *Oakville Company* case, we do not have before us a situation in which the exported fish hooks were "consumed" in making a different article which itself is to be assessed with duty, so a holding here that appellee has not sustained its burden of proving that the fish hooks were not *advanced in value* or improved in condition by manufacture or *other means*, as required by the statute, would not be in conflict with our holding there. We are not, of course, bound by the Customs Court's holding in *Winthrop-Stearns* or, for that matter,

⁴This paragraph provided: "Any article exported from the United States for repairs or alterations may be returned upon the payment of a duty upon the value of the repairs or alterations at the rate or rates which would apply to the article itself in its repaired or altered condition"

⁵In that case medicinal tablets were sent to Canada in bulk. There they were bottled, 100 tablets per bottle, labeled, and the bottles packed in individual containers. The Customs Court said it was apparent that the merchandise was bottled to make it readily available to the ultimate consumer and that it was converted from tablets *per se* into a different unit of merchandise or article of trade "undoubtedly of greater commercial value." The court held that the tablets in bottles were not entitled to free entry as goods returned without having been advanced in value or improved in condition.

Border Brokerage, but I can see no reason why *Winthrop-Stearns* would not be citable as precedent for reversal in this case. As appellant points out, some six years after the decision in that case, Congress enacted the Tariff Schedules of the United States. It is presumed that it did so with full knowledge of the decision, and reenactment of the American-goods-returned provision without change is persuasive that Congress intended the *Winthrop-Stearns* construction of the statute to continue. See *Zemel v. Rusk*, 381 U.S. 1 (1965).

The decision of the Customs Court should be reversed and the case remanded inasmuch as the court did not consider the question of alternative classification under item 807.00.

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Nils A. Boe

Judges

Paul P. Rao
Morgan Ford
Scovel Richardson
Frederick Landis

James L. Watson
Herbert N. Maletz
Bernard Newman
Edward D. Re

Senior Judges

Charles D. Lawrence
David J. Wilson
Mary D. Alger
Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Customs Decisions

(C.D. 4538)

OLYMPUS CORP. OF AMERICA *v.* UNITED STATES

Compound optical microscopes

The imported article, in the assembled condition imported, was classified as a compound optical microscope. It consists of a base, an arm, a mounting for interchangeable heads; a quintuple revolving nosepiece for mounting interchangeable eyepieces, a mounting for a stage and substage condenser, coarse and fine adjustment knobs;

a flip-switch that moves to a position labeled "lock"; an illuminator built into the base; a lens system for projecting the illumination to the condenser, and a three-position flip-switch for the built-in illuminator. In the condition imported, the assembled article has no ocular head, no eyepieces, no objectives, no condenser, and no specimen stage.

The coarse and fine adjustment knobs and the illuminating system of a microscope are adjuncts and accessories that add to the effectiveness of a microscope within the common meaning of the terms frames and mountings, and parts thereof, for compound optical microscopes. Cases cited and discussed.

Held. In the context of TSUS item 708.73 classifying compound optical microscopes and TSUS item 708.80 classifying frames and mountings, and parts thereof, for compound optical microscopes, the assembled article, in the condition imported, is properly classifiable under the provision for frames and mountings, and parts thereof, for compound optical microscopes, as plaintiff claims, rather than as a compound optical microscope, unfinished, as defendant contends.

Court No. 71-11-01649

Port of New York

[Judgment in part for plaintiff.]

(Decided May 6, 1974)

Rode & Qualcy (*Ellsworth F. Qualey and William E. Melahn* of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Joseph I. Liebman*, trial attorney), for the defendant.

LANDIS, Judge: This action¹ involves the classification of an assembled article imported from Japan and entered at New York on November 13, 1969. Customs officials classified the assembled article as a compound optical microscope (defendant's theory is that it is a microscope, unfinished)² under TSUS (Tariff Schedules of the United States) item 708.73, dutiable at the modified rate of 36 per centum ad valorem, pursuant to trade agreement.³

Plaintiff alleges that the assembled article is properly classifiable under the tariff provision classifying frames, mountings, and parts

¹ The action covers two administrative protests identified as numbers 1001-1-007862 and 1001-1-003759, reviewed and denied by customs officials in proceedings under the Customs Administrative Act of 1970 (84 Stat. 282). Plaintiff, in its complaint, has abandoned the action as to protest 1001-1-007862 covering entries 430093 and 587196.

² TSUS General Interpretative Rule 10(h).

³ Presidential Proclamation 3822, 82 Stat. 1455, 1584.

thereof, for compound optical microscopes, dutiable at 24 per centum ad valorem under TSUS item 708.80.⁴

The competing tariff provisions, in pertinent context, are provided for in TSUS as follows:

SCHEDULE 7.— SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS

Part 2.— Optical Goods; Scientific and Professional Instruments; Watches, Clocks, and Timing Devices; Photographic Goods; Motion Pictures; Recordings and Recording Media

* * * * *
Subpart A.— Optical Elements, Spectacles, Microscopes, and Telescopes; Optical Goods Not Elsewhere Provided For
* * * * *

Compound optical microscopes; electron, proton, and similar microscopes and diffraction apparatus; all the foregoing whether or not provided with means for photographing or projecting the image; frames and mountings for the foregoing articles, and parts of such frames and mountings:

Compound optical microscopes:
Not provided with means for
photographing or projecting
the image:

708.73	Valued over \$50 each-----	36% ad val.
708.80	Frames and mounting, and parts thereof: For compound optical microscopes -----	24% ad val.

There are, in TSUS, statutory rules for interpreting the provisions describing the classes of imported merchandise for duty purposes. Relevant to this dispute, defendant relies on TSUS General Interpretative Rule 10(h), which provides as follows:

(h) unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled, and whether finished or not finished.

All merchandise imported into the United States is classifiable in the condition that it is imported. *United States v. P. John Hanrahan, Inc., et al.*, 45 CCPA 120, C.A.D. 684 (1958). The article in this case,

⁴ *Id.*

in the condition imported, is assembled. The record substantially establishes that the assembled article is complete or finished in the sense that it requires no further processing, manufacturing or labor to advance it for the purpose intended. The assembled article is, however, incomplete or, if you will, unfinished, in the sense that it lacks optical and other vital components necessary for it to function as a compound optical microscope. No one questions that in the assembled condition imported, the article is advanced to the point that it is dedicated to be a compound optical microscope.

The issue in this case is, quite simply, whether the assembled article, in the condition imported, is classifiable under TSUS item 708.80 provision for frames and mountings, and parts thereof, for compound optical microscopes, as plaintiff claims, rather than under TSUS item 708.73 as a compound optical microscope, unfinished. If the assembled article is in reality a frame and mounting for a compound optical microscope, specially provided for under TSUS item 708.80, there is, in my opinion, little merit to the customs classification as a compound optical microscope, unfinished, under TSUS item 708.73.

Defendant, in its argument that the assembled article is not classifiable as plaintiff claims, contends that, in the condition imported, the article assembled is more than a frame and mountings, and parts thereof, for a compound optical microscope. With respect to that contention, it is important to note that defendant *does not* contend that merely because the article imported is assembled, it may not be classified under the descriptively specific provision for frames and mountings, and parts thereof, for compound optical microscopes.⁵

⁵ If an unassembled article cannot be classified as the article it will be when assembled, unfinished, if it is imported without vital components necessary to complete it. *United States v. Baldt Anchor, Chain & Forge Division of the Boston Metals Co. et al.*, 59 CCPA 122, C.A.D. 1051, 459 F. 2d 1403 (1972), it follows that an imported assembled article, lacking the vital components that characterize or comprise a compound optical microscope, is not classifiable as a compound optical microscope, unfinished, in competition with a tariff provision classifying the individual entities of which the assembled article is comprised. This conceptual result is supported by the judicial principle that:

* * * If what is imported as a unit is actually and commercially two or more individual entities which, even though imported joined or assembled together, nevertheless, retain their individual identities and are not subordinated to the identity of the combination, duties will be imposed upon the individual entities in the combination as though they had been imported separately. * * * if there are imported in one importation separate entities, which by their nature are obviously intended to be used as a unit, or to be joined together by mere assembly, and in such use or joining the individual identities of the separate entities are subordinated to the identity of the combined entity, duty will be imposed upon the entity they represent. [*Donade Ltd., Inc v. United States*, 32 Cust. Ct. 310, 315, C.D. 1619 (1954).]

The classification "unfinished" (General Interpretative Rule 10(h)) applies unless the context of the tariff classification for an article requires otherwise. The context of the provision for compound optical microscopes, and frames, mountings and parts thereof, for compound optical microscopes, in my view, requires that the latter be so classified whether assembled or not assembled.

The record herein consists of the testimony of three witnesses for plaintiff, one witness for defendant, and various exhibits. Exhibit 1 is representative of the assembled article in the condition imported.

The testimony, visual examination, and other evidence (exhibits A and C) establish that, in the assembled condition imported, exhibit 1 consists of a base, an arm, a mounting for interchangeable monocular, binocular or triocular heads; a quintuple revolving nosepiece for mounting interchangeable objectives (eyepieces); a mounting for a stage and substage condenser; coarse and fine adjustment knobs; a flip-switch that moves to a position labeled "lock"; a "perfect" illuminator enclosed in the base; a lens system with two or four lenses mounted on the base for projecting the illumination to the condenser, and a three-position flip-switch for the illuminator. It is also established that, in the condition imported the assembled article lacks necessary components for it to function as a compound optical microscope, namely, an ocular head, eyepieces, objectives, condenser, and specimen stage (exhibits 2A, B, C, D and E).⁶

Material to its argument that the assembled article is more than a frame and mountings and parts thereof for a compound optical microscope, defendant relies on the testimony, next summarized, pertaining to the assembled article and the fact that the assembled article includes a system for illuminating the object and coarse and fine adjustment knobs.

Plaintiff's witness, Mr. Braginsky,⁷ testified that a frame for a microscope is that part which holds the optics and specimen in proper alignment. A mounting, he stated, is a mechanical device attached to the frame, on which you mount the optics or another part of the microscope. The built-in illuminating source on the imported assembled article, in the opinion of Mr. Braginsky, is not a frame or mounting. The lens mounted on the base of the assembled article is part of the built-in illuminating system. Mr. Braginsky testified that an illuminating source is an essential element of a compound optical microscope and, as seen in the assembled article (exhibit 1), the built-in illuminator is part of the frame.

Dr. Pollister,⁸ witness for plaintiff, testified that the assembled article (exhibit 1) is a frame; that the adjustment knobs and other attachments, including the illuminating system, are part of the frame;

⁶ Exhibit 3 illustratively represents the assembled article with an ocular head, eyepiece, objectives, condenser, and specimen stage.

⁷ Mr. Sidney Braginsky, employed by plaintiff as manager of its precision instrument division.

⁸ Arthur W. Pollister, a retired professor of zoology, and consultant to plaintiff, testified that his professional work required extensive use of microscopes and he was familiar with microscopes. Dr. Pollister acknowledged, however, that he was not "familiar with this particular microscope [exhibit 1]."



that the lens mounted on the base of the assembled article is part of the illuminating system; that an illuminating system is essential to a compound optical microscope, and that the illuminating system has a function unto itself.

Defendant's witness, Mr. Forgosh,⁹ testified that, in his opinion, the assembled article consists of more than a frame and mountings and parts thereof, for a compound optical microscope, because of the additional independent functions and moving parts, namely, the illuminator, coarse and fine adjustment knobs, and rack and pinion for the substage.

Whatever else may be said for the above testimony, it is merely advisory since the court is not bound by testimony with respect to the tariff meaning of the term frames and mountings, and parts thereof, for compound optical microscopes. *Tropical Craft Corp v. United States*, 45 CCPA 59, C.A.D. 673 (1958); *United States v. Mercantil Distribuidora, S.A., et al.*, 43 CCPA 111, C.A.D. 617 (1956). For as defendant acknowledges "[i]n order to determine if an article is more than that provided for in a particular tariff provision, it is necessary to ascertain the common meaning of the tariff provision and compare it with the * * * [article] in issue." *E. Green & Son (New York), Inc. v. United States*, 59 CCPA 31, 34, C.A.D. 1032, 450 F. 2d 1396 (1971). And as quite often happens, it is on a case by case basis that the court construes and sets the limits of statutory language by a process of inclusion and exclusion and, by this process, bound by no evidence, determines the common meaning as it is the court's function to do. *Marshall Field & Co. v. United States*, 45 CCPA 72, C.A.D. 676 (1958).

As stated in the legislative history known as the Tariff Classification Study (schedule 7, page 143), "[t]he * * * provisions for frames and mountings and parts thereof [item 708.80] follow present practices." An existing practice must reflect the case by case process of inclusion and exclusion, which the court has set the limits of the statutory language frames and mountings and parts thereof, as commonly understood.¹⁰ The following court decisions cited by plaintiff in its brief are relevant precedents as to the common meaning of the terms "frames and mountings, and parts thereof" in connection with optical instruments, including microscopes.

⁹ Harold Forgosh, employed as district sales manager by Bausch and Lomb, Inc., a manufacturer of optical and electronic components and instruments.

¹⁰ See, TSUS General Headnotes and Rules of Interpretation, General Interpretative Rule 10 statement that for purposes of TSUS, the provisions describing the classes of imported articles are subject to the rules therein, and to such other rules of statutory interpretation as are not inconsistent, established by judicial decision.

United States v. American Express Co., 7 Ct. Cust. Apps. 169, T.D. 36490 (1916), involved classification of a metal structure, designed to serve as a support for the motive machinery, film reels, lamp house, and projection lenses of a moving-picture machine. Customs classified the metal structure as the frame of an optical instrument dutiable under paragraph 93 of the Tariff Act of 1913 which provided for frames and mountings for optical instruments. Judgment below entered sustaining importer's claim that the metal structure was properly classifiable as the frame of a projection lens under paragraph 94, which provided for frames and mountings for projection lenses. On appeal, the United States arguing that the metal structure was more than a frame for a projection lens because a projection lens mounted on a frame with the appliances necessary to make it ready for use ceases to be a projection lens and becomes a moving-picture machine which is an optical instrument, apparently also opted to restricting the meaning of the terms "frames" and "mountings" to those parts (i.e. metal tube) into which the lens is fitted.

Replying to the argument, the court of appeals pointed out that Congress, having provided in paragraph 94 for frames and mountings for projection lenses, must have contemplated such a thing as a projection lens mounted and ready for use. Countering a contention which would restrict the meaning of the terms "frames" and "mountings," the court of appeals stated as follows:

* * * If * * * [a] restricted meaning, however, is given to the terms "frames" and "mountings" when applied to projection lenses, the same restricted meaning must be given to them when applied to the surveying instruments and telescopes provided for in the same paragraph, and that we do not think can be done, inasmuch as surveying instruments and telescopes are certainly something more than mere lenses. (See "Telescope," Standard Dictionary and Encyclopedia Britannica.) If frames and mountings for surveying instruments and telescopes mean the supporting structure and certain adjuncts of those instruments required for their use, then they must mean the supporting structure and certain adjuncts of a projection lens required for its use.

In our opinion, the evidence in this case very clearly establishes that the metal support, the reels, the electric lamp, the mirror, the condenser, and the motive machinery are all instrumentalities designed to aid and assist the projection lens in producing on a screen an enlargement of the small pictures on the film, and that without such appliances the projection lens would be wholly ineffective for that purpose. Unquestionably the completed article would be a moving-picture machine and possibly it might be regarded as an optical instrument. Nevertheless, it would be at the same time a projection lens supported by the frame and fitted with the adjuncts which make it available for use. From that it

follows that even if the frame here involved be considered as the frame for an optical instrument, it is none the less the frame for a projection lens, and as frames for projection lenses are provided for in paragraph 94, that provision must be preferred to the less specific and more comprehensive provision in paragraph 93 covering frames for optical instruments. [*United States v. American Express Co.*, 7 Ct. Cust. Apps. 169, at pages 171-172.]

In *United States v. International Forwarding Co.*, 9 Ct. Cust. Apps. 156, T.D. 37995 (1919), appeal was taken from decision involving an importation of tubes for a polariscope. Customs had classified the tubes as mountings for an optical instrument (paragraph 93, Tariff Act of 1913). Judgment had entered holding the tubes properly classifiable as manufactures in chief value of metal (paragraph 167, 1913 Tariff Act). As stated in the court of appeals opinion decision, the polariscope tubes were specially designed glass tubes, in varying lengths, for holding liquids to be examined in polariscopes in polarized light. Attached to each end of the tubes were metal ends with screwed brass attachments containing glass disks. Acknowledging that the statement quoted above from *United States v. American Express Co.*, *supra*, constituted *obiter dicta*, the court of appeals stated that it was constrained to reverse the decision below and follow the decision in *American Express* because the *obiter* statement accorded with the lexicographic meaning of the term "mountings" which, "when used in connection with optical instruments such as the microscope and polariscope is used in the sense of accessories, adjuncts, or parts thereof, which plainly would include the polariscope tubes * * *." [9 Ct. Cust. Apps., at page 159. Emphasis added.]¹¹

In *Lietz Co. v. United States*, 11 Ct. Cust. Apps. 426, T.D. 39434 (1923), the court of appeals reversed a decision sustaining the customs classification of spirit levels (closed small blown-glass tubes filled with a clear liquid containing a floating bubble of air, used with surveying transits) as articles of every description composed wholly or in chief value of blown glass. The court of appeals held the spirit levels properly classifiable as mountings for surveying instruments within the common meaning of the term "mountings," because, as stated by the court "[w]e think that the term 'mountings' includes such nonoptical accessories as are mounted upon the instruments, and is not limited to the parts whereby they are supported thereon," *United States v. International Forwarding Co.* and *United States v. American Express Co.*, *supra*.

¹¹ See also, *United States v. Sheldon & Co.*, 9 Ct. Cust. Apps. 153, T.D. 37994 (1919), reversing decision below and holding mother-of-pearl staves and name rings, imported and suitable for no other use than as mountings or embellishments for opera glasses, properly classifiable as mountings for opera glasses.

The above decisions were reviewed and approved in *Thomas Co. v. United States*, 12 Ct. Cust. Appl. 425, T.D. 40591 (1924), wherein the court noted that:

In each of the cases referred to the merchandise involved consisted of accessories, adjuncts, or parts of the instruments described in the paragraph under consideration, and each article was designed to be attached to the instrument of which it was an accessory, adjunct, or part, and was further designed as such an essential, or at least as such an important element, as, when attached, it would aid the instrument to perform its proper function.

It is evident from a careful reading of paragraph 228, *supra*, that the word "mountings" as used therein has the same meaning as the word "mountings" as used in paragraph 94 of the tariff act of 1913 in so far as the same may pertain to microscopes. [Page 428.]

Citing definitions of the words "accessory" and "adjunct," the court of appeals held that microscopic slides and cover glasses were not mountings for microscopes as classified by customs under paragraphs 228 of the 1922 Tariff Act, because in the tariff sense of "mountings" as accessories or adjuncts:

The glass slides are not designed to be joined, connected, or attached to a microscope and are therefore not adjuncts of it. Nor are they designed to be connected with a microscope so as to contribute to or aid it in the performance of the essential and proper function of such instrument. The glass slide is not in any sense an addition to the microscope, nor does it accompany it, within the definition of the word "accessory." Certainly it is not a part of the microscope. It is designed to be used in connection with a microscope, but not to aid or contribute to the proper office or function of the instrument as such. It may be classed as a mount or mounting in the sense that a specimen for microscopic analysis is mounted upon it, but it is not, merely on that account, a mounting for a microscope. * * *¹² [Page 429.]

Where the congressional intent as expressed in competing classification provisions so requires, the term "frames and mountings," as applied to photographic lenses (paragraph 228, Tariff Act of 1922), has been given a restricted meaning, limited to the frames in which, and to the parts on which, such lenses are intended to be mounted or supported, *United States v. Bell & Howell Co.*, 19 CCPA 151, 155, T.D. 45263 (1931). In *Bell & Howell*, after again reviewing the cases discussed herein and definitions of the word "mounting," the court of

¹² See also, *American Holding Corp. et al. v. United States*, 18 CCPA 274, T.D. 44449 (1930), citing and discussing the same decisions in support of classifying essential units or parts of a motion-picture projection mechanism as mountings or frames for projection lenses.



appeals concluded that Congress intended such restricted meaning and stated as follows (pages 155-156) :

It is evident from these definitions that the term "mountings" may mean, depending on the intention of the Congress, that which serves as a mount or a support for an article; or it may include accessories, adjuncts, and equipment by means of which an article is prepared or equipped for use, or set off to an advantage.

In the cases hereinbefore cited this court adopted the enlarged meaning and applied it to the articles and instruments considered in those cases. However, this meaning has never been applied, so far as we are aware, to the provisions for "mountings" for "photographic lenses." Furthermore, we are of opinion that it was not the intention of the Congress to use the word "mountings" in connection with "photographic lenses" in its broad and comprehensive meaning. On the contrary, we think the Congress intended that, as applied to "photographic lenses," the phrase "frames and mountings" should be given a restricted meaning and should be limited to the frames in which, and to the parts on which, such lenses are intended to be mounted or supported. Any other construction would result either in so greatly limiting the operation of the provisions for photographic cameras and parts thereof, in paragraph 1453, as to defeat the evident purpose of the Congress, or in placing such a doubtful and indefinite limitation on the provisions for "frames and mountings" for photographic lenses as to make it difficult, if not impossible, for importers and customs officials, and the courts for that matter, to comprehend the scope of them.

The clear and uncontested evidence in this case is that the articles in question are "Kodacolor filter adapters for 1" F/1.8 formula IVA lenses," designed and used as equipment and accessories for, or adjuncts of, photographic lenses, and are, when in use, so connected that they directly contribute to, and aid, photographic lenses in the performance of their proper functions. However, they do not serve as mounts, supports, nor as frames for the lenses, but are merely connected to them. They are not, therefore, within the restricted meaning intended by the Congress to be applied to the phrase "frames and mountings" when used in connection with "photographic lenses."

It is obvious from the cases discussed herein that different factors such as function, uses, applicable tariff provisions and common sense were taken into consideration in determining whether particular parts were frames and mountings in the common meaning of the term as applied to particular instruments. The situation must be viewed as a whole. *Marshall Field & Co. v. United States, supra*. The term "frames and mountings," as applied to microscopes, has, on a case by case basis, been broadly and comprehensively construed to include accessories, adjuncts, and equipment by means of which a microscope is prepared or equipped for use.

The assembled article (exhibit 1) bears potent witness of what it is. Defendant, in substance, contends that because the assembled article includes coarse and fine adjustment knobs and a built-in illuminating system, it is more than a frame and mountings for a compound optical microscope. Coarse and fine adjustment knobs attached to the frame of a microscope are "adjusting accessories" within the scope of that authority which "exerted the greatest influence on the arrangement of the * * * [tariff] schedules," namely the Brussels Nomenclature.¹³ (Tariff Classification Study, Submitting Report, page 8.)

The illuminating system "built in" and attached to the assembled article performs an independent function that is basically auxiliary to the function of a compound optical microscope, which "usually [has] a provision for illuminating the object"¹⁴ (emphasis added). If a compound optical microscope usually, but not always, incorporates a provision for illuminating the object, then the illuminating system is an accessory that adds to the effectiveness of a compound optical microscope. Cf., *Herbert G. Schwarz, dba Ski Imports v. United States*, 57 CCPA 19, C.A.D. 971, 417 F. 2d 1391 (1969); *T. D. Downing Co. et al. v. United States*, 68 Cust. Ct. 71, 75, C.D. 4338 (1972). The coarse and fine adjustment knobs and illuminating system attached to the assembled article in the explicit sense discussed in *Thomas Co. v. United States, supra*, are adjuncts and accessories, designed, joined, connected, and attached to a frame in a manner as to contribute and aid the performance of the instrument the assembled article as a whole represents, namely, a frame and mountings for a compound optical microscope.

Tariff statutes must be construed in a manner that accords with the legislative intent, *Sandoz Chemical Works, Inc. v. United States*, 43 CCPA 152, C.A.D. 623 (1956), and makes all parts of the statute effective. *United States v. Bell & Howell Co., supra*. Congress in providing for compound optical microscopes and frames and mountings for compound optical microscopes must have contemplated such a thing as frames and mountings and parts thereof, for compound optical microscopes. Where terms in a tariff statute have been judicially interpreted and a new statute is reenacted in substantially the same terms (frames and mountings, and parts thereof, for compound optical microscopes in TSUS are substantially the same terms used in prior tariff acts), the terms will be given the same interpretation, unless a contrary legislative intent is clearly shown. *United States v. E. Dillingham, Inc.*, 41 CCPA 221, C.A.D. 555 (1954). Congress, as men-

¹³ See, Explanatory Notes to the Brussels Nomenclature (1955), Volume III, page 1035, heading 90.12.

¹⁴ Tariff Classification Study, Schedule 7, items 708.71 through 708.73, page 143.

tioned earlier, was advised that the provision for frames and mountings followed existing practices. The existing practices presumably followed the judicial decisions broadly construing the terms to include adjuncts and accessories for microscopes. Defendant has cited nothing that points to a different legislative intent in TSUS.

The rule, relied on by defendant, that a tariff description (in this case compound optical microscopes) covers such article whether finished or unfinished is a rule of classification *unless the context requires otherwise*. The provision for "Frames and mountings, and parts thereof: For compound optical microscopes," upon authority of the judicial decisions holding that the term frames and mountings includes adjuncts, accessories, and equipment by means of which an article is prepared or equipped, in my opinion, requires otherwise. Cf. *United States v. Bald Anchor, supra*.¹⁵

For the reasons herein discussed, this action claiming classification under TSUS item 708.80 is sustained with respect to entry No. K-195494 covered by the summons in the action.

Entry Nos. 430098 and 587196 covered by the summons having been abandoned, the action is dismissed as to those entries.

Judgment will enter accordingly.

(C.D. 4539)

NOVELTY IMPORT CO. v. UNITED STATES

Memorandum Opinion and Order

Court No. 71-6-00825

Port of New York

[Defendant's motion to dismiss granted;
plaintiff's motion to file out of time denied.]

(Dated May 6, 1974)

Serko & Sklaroff (Murray Sklaroff of counsel) for the plaintiff.

Carla A. Hills, Assistant Attorney General (Andrew P. Vance, Chief, Customs Section; Edward S. Rudofsky, trial attorney), for the defendant.

WATSON, Judge: By an order entered on September 24, 1973 following defendant's motion for a more definite statement, plaintiff was ordered to amend its complaint in this action within thirty days. After that time expired plaintiff moved for leave to file an amended com-

¹⁵ N. 5.

plaint out of time and requested a ten-day extension following entry of the order. Plaintiff's motion was granted and the order entered on November 29, 1973.

On February 27, 1974 defendant moved to dismiss the action for plaintiff's failure to amend the complaint as had been ordered. Pursuant to rule 8.3(b)(3) I am granting defendant's motion to dismiss for failure to comply with an order of the court.

Plaintiff's statement that its failure to file was due to error and inadvertence is, in light of the special flexibility previously shown plaintiff, unacceptable to excuse its failure. Furthermore, plaintiff's mention of the fact that the issue in this action is the same as one in an action presently pending before the Court of Customs and Patent Appeals has no bearing on this motion. Compliance with an order of the court should not be taken lightly in any action. The diligence with which one action may be prosecuted does not justify neglect or casual treatment of an order in another distinct action. I consider dismissal an appropriate measure in these circumstances.

For the reasons expressed above plaintiff's motion to have the amended complaint accepted at this time is without merit and must be denied.

It is therefore,

ORDERED, ADJUDGED and DECREED that plaintiff's motion to file an amended complaint out of time is denied, and it is further

ORDERED, ADJUDGED and DECREED that plaintiff's motion to file an this action is granted and the action is hereby dismissed.

(C.D. 4540)

OXFORD INTERNATIONAL CORP. v. UNITED STATES

Glass products

Bicycle mirrors imported from Japan in 1966, consisting of a mirror head and a mounting bracket were classified by the customs officials as mirrors under item 544.51 of the tariff schedules and assessed with duty at the rate of 35 per centum ad valorem. Plaintiff's claim for classification as an entirety and as parts of bicycles under item 732.36 dutiable at the rate of 30 per centum ad valorem sustained.

ENTIRETIES—CRITERIA

The importation at bar fully meets the criteria for classification as an entirety. The mirror head and mounting bracket were imported as one importation, were intended to be used as a unit, and when joined by mere assembly the parts that comprise the mirror

head and the mounting bracket were subordinated to the identity of the combined unit which formed a complete article of commerce, namely, a bicycle mirror. See *Miniature Fashions, Inc. v. United States*, 54 CCPA 11, C.A.D. 894 (1966). See also *Border Brokerage Co., Inc. v. United States*, 349 F. Supp. 1011, 69 Cust. Ct. 130, C.D. 4383 (1972).

As an entirety, the merchandise in issue did not consist solely of a mirror but also of other parts that comprise the mounting bracket. It was therefore not properly classifiable under the provision for mirrors, and inasmuch as there is no provision specifically covering bicycle mirrors, General Interpretative Rule 10(i) is inapplicable. That rule states that "a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part."

PARTS OF ARTICLE—ACCESSORY OR OPTIONAL

The importation in issue was known, bought and sold as a mirror to be attached to the handlebar of a bicycle; was specifically designed as a unit for use on a bicycle to provide the safety of rearview vision and was used exclusively on a bicycle as a bicycle mirror. As such, it was a bicycle part properly classifiable under item 732.36.

As previously decided by this court, an article may be a part, for customs duty purposes, even though it is merely optional equipment. See *Gallagher & Ascher Company v. United States*, 52 CCPA 11, C.A.D. 849 (1964). See also *Vilem B. Haan et al. v. United States*, 332 F. Supp. 182, 67 Cust. Ct. 104, C.D. 4260 (1971). Whether it serves as a bicycle accessory or as optional bicycle equipment, the bicycle mirror in issue was properly classifiable as a bicycle part. See *Mattel, Inc. v. United States*, 287 F. Supp. 999, 61 Cust. Ct. 75, C.D. 3531 (1968). See also *Victoria Distributors, Inc. v. United States*, 425 F. 2d 763, 57 CCPA 80, C.A.D. 980 (1970); *Eric Wedemeyer v. United States*, 7 Cust. Ct. 141, C.D. 556 (1941); *Oxford International Corp. v. United States*, 70 Cust. Ct. 217, C.D. 4433 (1973).

Court No. 67/14275

Port of Philadelphia

[Judgment for plaintiff.]

(Decided May 6, 1974)

Allerton deC. Tompkins for the plaintiff.

Carla A. Hills, Assistant Attorney General (*Patrick D. Gill* and *Andrew P. Vance*, trial attorneys), for the defendant.

Re, Judge: The question presented in this case pertains to the proper classification, for customs duty purposes, of bicycle mirrors imported from Japan in 1966. Each bicycle mirror consists of a glass

reflecting surface, known as the "mirror head," and a rod and clamps, that constitute the "mounting bracket."

The defendant, in its brief, describes the imported bicycle mirrors as follows:

"The importation herein (as represented by Plaintiff's Exhibit 1) consists of an encased glass reflecting surface, 3" in diameter, an 8" long rod and two clamps. The rod and clamps (mounting bracket) are attached to the back of the encased reflecting surface (mirror head) by means of a threaded bolt extended perpendicularly from the back of the mirror head through the smaller clamp, which is similarly extended from the side of the rod. This joint is held together by a wing nut. The opposite end of the rod is threaded and extends through the larger clamp. This second clamp is held in place by two hexagonal nuts (one placed above one 'arm' of the clamp, the other below the second 'arm'). It is this larger clamp which is used to affix the imported article to a bicycle handle bar." (Defendant's brief, pp. 10-11.)

It is admitted that the merchandise was imported in its assembled condition in a polyethelene bag labelled "BICYCLE MIRROR."

The customs officials classified the merchandise under item 544.51 of the Tariff Schedules of the United States (TSUS) as mirrors, made of any of the glass described in items 541.11 through 544.41, with or without frames or cases, not over one square foot in reflecting area. Duty was consequently assessed at the rate of 35 per centum ad valorem.

The type of glass, and the size of the reflecting area, are not in issue.

Plaintiff contests that classification of the bicycle mirrors, and claims that they are more than the mirrors described in item 544.51, and that, as an entirety, they should properly be classified as parts of bicycles under item 732.36 with duty at 30 per centum ad valorem.

Plaintiff claims alternatively that if the court were to decide that the importation is not to be classified as an entirety, then the mirror and frame, i.e., the "mirror head," and the rod and clamps, i.e., the "mounting bracket," should be held dutiable separately as follows: the "mirror head" or mirror portion of the merchandise be classified under item 544.51 (the provision for mirrors under which the customs officials classified the complete importation); and the "mounting bracket" or the bracket portion, should be classified as articles of steel not specially provided for, under item 657.20 with duty at 19 per centum ad valorem.

The defendant urges that the importation *is* an entirety, and that it has been properly treated as an entirety by the customs officials. It "vigorously opposes plaintiff's second alternate claim for severance and classification of the mounting bracket portion of the mirror as an

other article of metal * * * under item 657.20, TSUS." If it were assumed, however, for purposes of argument only, that the importation is not an entirety, and were to be dutied separately, then the defendant would urge that the "mirror head" be classified as a mirror, and the "mounting bracket" as a bicycle part. Defendant adds that while it concedes that the brackets are articles of iron or steel, under item 657.20, it submits that "it is apparent that they are more specifically provided for by item 732.36, TSUS, as other parts of bicycles * * *."

The pertinent provisions of the tariff schedules may be set forth as follows:

Classified under:

"Mirrors, made of any of the glass described in items 541.11 through 544.41, with or without frames or cases (except framed or cased mirrors of precious metal, and mirrors designed for use in instruments):

544.51 Not over 1 sq. ft. in reflecting area. 35% ad val."

Claimed under:

"Parts of bicycles:
Frames:

* * * * * * *

732.36 Other parts of bicycles----- 30% ad val."

Alternatively claimed under:

"Articles of iron or steel, not coated or plated
with precious metal:

* * * * * * *

Other articles:

657.15 Of tin plate----- 12% ad val.

657.20 Other ----- 19% ad val."

There is no serious dispute as to the facts of the case. Plaintiff's exhibit 1 is a representative sample of the merchandise and is labelled "BICYCLE MIRROR." Defendant's exhibit "A" is a "Bicycle Accessories Catalog" of the Oxford International Corporation. It is entitled "Oxford Better Bicycle Products," and depicts numerous bicycle articles including the "bicycle mirror" that is the subject of this litigation.

Plaintiff called two witnesses, and the substance of their testimony is easily restated. The importation is a bicycle mirror and is known, bought and sold as a bicycle mirror. It is a "bicycle accessory item." It is specially designed for use as a unit on a bicycle to provide the safety of rearview vision.

Certain testimony, calculated to show independent uses of the mirror head and the mounting bracket, and responses resulting from a misunderstanding of questions asked, may be disregarded. It is futile to quarrel with the conclusion that the "mirror head" is used solely with a "special bracket," and that "[o]ne is no good * * * without the other." Also, both items, as a single unit, are designed to be attached to a bicycle handlebar, and are used exclusively on a bicycle as a bicycle mirror. It may be well to add that approximately 50% of the value to the entirety is represented by the mirror head, and the other 50% by the mounting bracket.

The threshold question presented is whether the importation is an entirety for customs duty purposes. It is the determination of the court that, in fact and in law, the importation is a commercial unit properly dutiable as an entirety. On this aspect of the present litigation the court agrees with the position urged by the defendant in its brief that, the importation, specially designed and imported as a unit, fully meets the criteria for customs classification as an entirety. That the mirror head and the mounting bracket constitute an entirety for customs duty purposes is sufficiently clear and requires but little discussion.

The concept of entireties has been judicially expounded in several cases that are very well known in the field of customs law. None of them leave any doubt that if there is imported into the United States, in one importation, separate parts, which by their nature are obviously intended to be used as a unit, and when joined by mere assembly, the separate parts are subordinated to the identity of the combined unit, and the combined unit forms a complete article of commerce, the combined unit is dutiable as an entirety.

A leading case is *Miniature Fashions, Inc. v. United States*, 54 CCPA 11, C.A.D. 894 (1966). In the *Miniature Fashions* case the Court of Customs and Patent Appeals cited with approval the discussion of the law of entireties found in the case of *Donalds Ltd., Inc. v. United States*, 32 Cust. Ct. 310, C.D. 1619 (1954). In the *Donalds* case, this court stated:

"* * * If there are imported in one importation separate entities, which by their nature are obviously intended to be used as a unit, or to be joined together by mere assembly, and in such use or joining the individual identities of the separate entities are subordinated to the identity of the combined entity, duty will be imposed upon the entity they represent." 32 Cust. Ct. at 315.

The Court of Customs and Patent Appeals, in the *Miniature Fashions* case, also cited approvingly its decision in *Altman & Co. v. United States*, 13 Ct. Cust. Appls. 315, T.D. 41232 (1925). In the *Altman*

case, the appellate court expressed the tariff law doctrine of entireties in the following language:

" * * * if an importer brings into the country, at the same time, certain parts, which are designed to form, when joined or attached together, a complete article of commerce, and when it is further shown that the importer intends to so use them, these parts will be considered for tariff purposes as entireties, even though they may be unattached or included in separate packages, and even though said parts might have a commercial value and be salable separately." 13 Ct. Cust. Apps. at 318.

It cannot be seriously questioned that all of the various parts that comprise the mirror head and the mounting bracket, when assembled, form a commercial unit known and sold as a bicycle mirror. The defendant is justified in relying upon *Davar Products, Inc. v. United States*, 287 F. Supp. 994, 61 Cust. Ct. 57, C.D. 3526 (1968), for its contention that the importation at bar is a legal entirety.

The defendant properly distinguishes the case of *Broadway Hale Stores, Inc. v. United States*, 62 Cust. Ct. 507, C.D. 3816 (1969), from the case at bar. That case dealt with "a consignment of mirrors and wood mirror frames, separately invoiced and packed." 62 Cust. Ct. at 508. Plaintiff protested the classification of the mirrors and frames as a single commercial entity as mirrors with or without frames under item 544.51 of the tariff schedules. The classification of the mirrors was not before the court, but only the classification of the frames as separate entities under the appropriate item of the tariff schedules. The court noted that the frames were more valuable than the mirrors, and that, as imported, there were two articles, mirrors and frames, separately packed. In sustaining the protest the court stated that it was apparent that the importation therein consisted of "identifiably separate commercial entities." 62 Cust. Ct. at 511.

Quite apart from any guidance that may be derived from any single case, all of the judicial precedents which discuss the legal concept of entireties indicate clearly that the bicycle mirror at bar is a commercial entity dutiable as an entirety. See cases cited in *Border Brokerage Co., Inc. v. United States*, 349 F. Supp. 1011, 69 Cust. Ct. 130, C.D. 4383 (1972); *Lafayette Radio Electronics Corp. v. United States*, 421 F. 2d 751, 57 CCPA 62, C.A.D. 977 (1970). Hence, it is the determination of the court that the customs officials properly treated the imported bicycle mirror as an entirety.

Having decided that the importation is legally dutiable as an entirety, it is necessary to determine the competing claims pertaining to its proper classification. In essence, the bicycle mirrors have been classified as mirrors, whereas plaintiff maintains that they are properly classifiable as parts of bicycles. The question presented, therefore,

is whether plaintiff has succeeded in proving that the bicycle mirrors have been incorrectly classified, and that legally they should be classified as parts of bicycles.

There can be no question about the presumption of correctness that attaches to the classification of the customs officials, and the dual burden that must be borne by the plaintiff in order to prevail. 28 U.S.C. § 2635(a) (1970). See also *United States v. New York Merchandise Co., Inc.*, 435 F. 2d 1315, 58 CCPA 53, 58, C.A.D. 1004 (1970). Nevertheless, it is the determination of the court that the plaintiff has succeeded in establishing its primary claim that the bicycle mirrors were erroneously classified, and that they are properly classifiable, for customs duty purposes, as parts of bicycles.

The defendant not only stresses but concedes that the importation is an entirety, but wishes to have it classified as though it consisted only of a "mirror head." Were the question presented to be the proper classification of the mirror portion of the importation no one would seriously quarrel with its classification as a mirror. But this importation does not consist solely of the mirror. The mirror portion of the importation is only one part of the entirety. The entirety consists of the mirror portion plus the other parts that comprise the mounting portion. The importation consists of all the parts together which, when assembled, constitute a different and separate commercial unit bought and sold as a bicycle mirror.

The customs classification difficulty stems from the fact that there is no provision for "bicycle mirrors," and the question to be determined is whether they are embraced in the tariff provision which covers mirrors. Consequently, it is futile to assume that bicycle mirrors are covered under the contested tariff provision. Whether the importation, consisting of bicycle mirrors, was intended by Congress to be included in the contested provision for mirrors is the very question to be determined by the court.

At the trial, on motion by defendant, there was incorporated into the record of this case the record in the case of *Irving W. Rice & Co., Inc. v. United States*, 65 Cust. Ct. 125, C.D. 4064 (1970). In view of the reliance that defendant places upon the *Rice* case some extended treatment of that case seems warranted.

The importation in the *Rice* case consisted of a two-sided shaving mirror with an expansion arm. The mirror, which contained a reflecting surface and a magnifying surface, because of its "expansion arm" was also described as an "extension mirror." Although the most valuable component material of the importation was base metal, the mirror was of glass.

It was agreed by both sides in the *Rice* case, that "the issue to be decided is whether TSUS item 544.51 covers all mirrors made of any of

the glass described in items 541.11 through 544.41, with or without frames or cases, regardless of their component material in chief value." 65 Cust. Ct. at 127.

The articles in the *Rice* case were concededly to be classified as *mirrors*, and the only question presented was which one of two competing mirror classifications should have been applied. In that case the extension mirrors had been classified under item 544.51 of the tariff schedules at 33 per centum ad valorem, whereas plaintiff maintained that they were properly dutiable at only 17 per centum ad valorem under item 652.70 of the schedules. Item 544.51, under which the extension mirrors were classified, deals with "mirrors, made of any of the glass described in items 541.11 through 544.41, with or without frames or cases (except framed or cased mirrors of precious metal, and mirrors designed for use in instruments)." Item 652.70, under which plaintiff claimed classification, covers "photograph, picture, and similar frames; mirrors; all the foregoing of base metal, whether or not coated or plated with precious metal."

In the *Rice* case, in the language of the court, "[t]he crux of this dispute is that both of those dutiable items cover mirrors in different context * * *."

In sustaining the customs classification and overruling plaintiff's protest the court stated:

"The specific reference in TSUS item 544.51, to mirrors made of any of the described glass, refutes plaintiff's projected idea that we would construe TSUS item 544.51 to include all glass mirrors. We could not give it such construction. But mirrors, with or without frames, made of any of the described glass, are classified in TSUS item 544.51 regardless of the component material of chief value, excepting only framed or cased mirrors of precious metal, and mirrors designed for use in instruments. The lawmakers particular exception of framed or cased mirrors of precious metal (i.e., wholly or in chief value of precious metal) from the reach of TSUS item 544.51, in our opinion, clearly signals an intention that TSUS item 544.51 not be judicially diluted beyond the plain terms of the particular exception." 65 Cust. Ct. at 131.

Without deciding what mirrors were covered by item 652.70 of the tariff schedules, the court in the *Rice* case concluded as follows:

"It suffices that, in classifying mirrors made of described kinds of glass, TSUS item 544.51 is relatively more specific than is TSUS item 652.70 which classifies a much broader class of mirrors, without regard to the kind of reflecting glass or other reflecting material, of base metal. The provisions are, in their relevant parts, mutually exclusive and the mirrors embraced within TSUS item 544.51 are not covered by TSUS item 652.70." *Ibid.*

Surely, in view of the competing tariff items and the issue presented, the *Rice* case is clearly distinguishable. The importation in that case was concededly a mirror and the only question presented was to determine which mirror provision covered the imported mirror. Unlike the *Rice* case no claim is made in the case at bar that the bicycle mirror is classifiable under item 652.70 which covers mirrors of base metal. Simply stated, the *Rice* case solely raised the question whether the two-sided glass shaving mirror, mounted on an extension, and in chief value of metal, should or should not have been classified as a mirror of glass. Furthermore, the crucial questions whether the importation was something other or more than a "mirror," and therefore not covered by the mirror provisions, and whether it was in fact and in law, a part of something else, were neither raised nor treated in the *Rice* case. Hence, the *Rice* case sheds but little light on the present litigation for these are the questions presented here.

Before noting the judicial authority that pertains to the classification of the bicycle mirrors as parts of bicycles it seems appropriate to comment upon the specific language of item 544.51 of the tariff schedules. That item covers glass mirrors "with or without frames or cases (except framed or cased mirrors of precious metal, and mirrors designed for use in instruments)." The language is quite clear and specific that, "except framed or cased mirrors of precious metal, and mirrors designed for use in instruments," the item covers mirrors "with or without frames or cases." One of the parts of the importation at bar is indeed a mirror, and that mirror is also framed. This framed mirror, however, is not the importation before the court. As indicated previously, the importation consists of a mirror and its frame, together with the other parts that are collectively called a mounting portion. The tariff item speaks only of "frames or cases," and in its pleadings the defendant "admits that the mounting portion of the merchandise is neither a frame nor a case for a mirror." Hence, the importation is not covered by item 544.51, nor is there any other tariff provision that specifically covers bicycle mirrors. There can therefore be no application of General Interpretative Rule 10(ij) of the tariff schedules. Rule 10(ij) states that "a provision for 'parts' of an article covers a product solely or chiefly used as a part of such article, but does not prevail over a specific provision for such part."

The classification question before the court pertains to the entirety which includes all of the parts that constitute the importation. When assembled, the totality is immediately recognized and sold as a commercial unit known as a bicycle mirror.

It is the determination of the court that the bicycle mirror is a part of a bicycle, and is therefore properly dutiable under item 732.36 of the tariff schedules.

What constitutes a "part" or "parts," for customs duty purposes, has been treated with thoroughness in several decisions of this court and the Court of Customs and Patent Appeals. The leading cases that authoritatively set forth the applicable principles of law are *Gallagher & Ascher Company v. United States*, 52 CCPA 11, C.A.D. 849 (1964), and *Trans Atlantic Company v. United States*, 48 CCPA 30, C.A.D. 758 (1960). These and other cases are discussed in *Vilem B. Haan et al. v. United States*, 332 F. Supp. 182, 67 Cust. Ct. 104, C.D. 4260 (1971). The *Gallagher & Ascher* case is particularly helpful since it also indicates that an article may be a "part," for customs duty purposes, even though it is merely "optional equipment." Hence, whether the bicycle mirror is a bicycle "accessory" or "optional equipment" would in no way prevent it from being classified as a bicycle part. *Mattel, Inc. v. United States*, 287 F. Supp. 999, 61 Cust. Ct. 75, C.D. 3531 (1968). In the words of Judge Lane, who wrote the opinion of the Court of Customs and Patent Appeals in *Victoria Distributors, Inc. v. United States*, 425 F. 2d 759, 761, 57 CCPA 76, 79, C.A.D. 979 (1970), "**** to find that something would be dutiable as a 'part' does not in the least preclude its being an accessory in trade parlance." The *Victoria Distributors* case dealt with battery-operated horn-light combinations. There was no doubt that the bicycle trade considered them to be bicycle "accessories." There was also no doubt that "as a matter of commercial reality" they were dedicated to use on bicycles. In sustaining the classification as parts of bicycles, Judge Lane made the additional finding that "the horn-lights contribute to the safe and efficient operation of bicycles." 425 F. 2d at 762. Surely, the same may be said of the bicycle mirrors at bar.

Many cases may be cited that support the classification of the bicycle mirrors as parts of bicycles. A few may suffice. In *Victoria Distributors, Inc. v. United States*, 425 F. 2d 763, 57 CCPA 80, C.A.D. 980 (1970), the court found the holding in the prior case of the same name to be controlling, and held generator lighting sets, also optional equipment or accessories dedicated to use on bicycles, to be parts of bicycles.

In *Eric Wedemeyer v. United States*, 7 Cust Ct. 141, C.D. 556 (1941), this court reversed the classification of the customs officials and held that "complete bicycle lamps" were properly dutiable as parts of bicycles. In the *Wedemeyer* case the court relied on *United States v. Bosch Magneto Co.*, 13 Ct. Cust. Appls. 569, T.D. 41434 (1926), which

held that lamps and horns were parts of automobiles. Commenting upon the safety aspect of the articles, the court, in the *Wedemeyer* case, observed that the reasoning of the *Bosch Magneto* case, as to the safety feature of the automobile lamps and horns, also applied to bicycles. Referring to state statutes, that required bicycles operated at night to be equipped with lamps, the court stated:

"The existence of these statutes would clearly indicate that the safe, proper, and efficient operation of bicycles at night requires the illumination furnished by bicycle lamps such as those involved herein." 7 Cust. Ct. at 143.

The *Wedemeyer* case was relied upon and followed in the case of *Spiegel Bros. Corp. v. United States*, 9 Cust. Ct. 194, C.D. 692 (1942), where bicycle horns were held to be parts of bicycles. More recently, in the case of *Oxford International Corp. v. United States*, 70 Cust. Ct. 217, C.D. 4433 (1973), this court sustained the classification of bicycle horn-lights as parts of bicycles. As in prior cases reference was made to the fact that the horn-lights "contribute to the safe and efficient operation of bicycles."

In *F. A. Baker Co. v. United States*, 17 Cust. Ct. 41, C.D. 1017 (1946), this court sustained the classification of bicycle inner tubes as parts of bicycles.

In *Merry Bean Co. v. United States*, 2 Cust. Ct. 123, C.D. 104 (1939), this court sustained the claim that leather straps fitted with metal buckles that served as substitute brakes for racing bicycles were parts of bicycles.

In *Davies, Turner & Co. v. United States*, 40 CCPA 193, C.A.D. 517 (1953), steel bicycle chains were held to be dutiable as parts of bicycles rather than "chains of iron or steel used for the transmission of power * * *."

Much that was stated in the cited cases would apply to the case at bar.

In conclusion, it is the determination of the court that the imported bicycle mirrors, for customs purposes, are entireties that are properly classifiable as parts of bicycles under item 732.36 of the tariff schedules with duty at 30 per centum ad valorem. In view of the foregoing, the alternative claims of the plaintiff need not be considered further.

Since the court has determined that plaintiff has successfully borne its burden of proof, its claim for the classification of the imported merchandise under item 732.36 of the tariff schedules is hereby sustained.

Judgment will issue accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

CUSTOMS COURT

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VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Par. or Item No. and Rate	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE	
							Par. or Item No. and Rate	Par. or Item No. and Rate
P74/204	Landis, J. May 9, 1974	Allied Petroleum Corp.	06/40, etc.	Par. 1568 10% Item 748.20 28% (Items marked "A");	Par. 1738 Free of duty Item 719.60 17% (Items marked "A")	Asiatic Petroleum Corp. v. U.S. (C.A.D. 1029)	San Francisco Shell Alaska Oil A	New York Artificial flowers, etc. (Items marked "A")
P74/205	Watson, J. May 9, 1974	Allied Display Materials, Inc.	07/29/78, etc.	28% (Items marked "P")	Item 719.60 18.5% (Items marked "B")	Ambrose Corporation et al. v. U.S. (C.D. 3278); Zanoldi Trading Corporation et al. v. U.S. (C.D. 3279); First American Artificial Flowers, Inc. v. U.S. (C.D. 4186) (Items marked "A")	Mistletoe and holly floral arrangements (Items marked "B")	International Airware Corporation v. U.S. (C.D. 4184) (Items marked "B")

CUSTOMS COURT

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	PORT OF ENTRY AND MERCHANDISE	
						PAR. OR ITEM NO. AND RATE	PAR. OR ITEM NO. AND RATE
P74/296	Newman, J. May 9, 1974	Hancock-Gross, Inc.	73-3-00677	Item 657.90 13% or 11%	Item 654.20 11.5% or 10%	The Westbrass Company v. U.S. (C.D. 4268)	Philadelphia Showheads
P74/297	Re, J. May 9, 1974	James Belesh Import Co. et al.	66/2328, etc.	Item 772.15 17%	Item 772.35 12.5%, 11%, 10% or 5.5%	Venetianaire Corp. of America v. U.S. (C.A.D. 1084)	New York Vinyl mattresses and pillow covers
P74/298	Ford, J. May 10, 1974	North American Foreign Trading Corp.	68/15071, etc.	Par. 1551 or 1531/ 1550(a) 28%	Par. 353 12.5%	Judgment on the pleadings Lafayette Radio Electronics Corp., v. U.S. (C.A. D-977)	New York Radio cases (entitled with radios)
P74/299	Ford, J. May 10, 1974	Selection International Corp.	69/16776, etc.	Item 654.70 16%, 13% or 12%	Item 655.22 12.5% Item 655.25 11% or 10%	Summary judgment: General Electric Company v. U.S. (C.D. 3887, aff'd C.A.D. 1021)	Chicago Earphones
P74/300	Richardson, J. May 10, 1974	Ross Products, Inc.	68/3326	Item 653.40 18%	Item 658.40 11.5%	Ross Products, Inc. v. U.S. (C.A.D. 994)	Tampa Bird cages with flowers and lights U.S. v. L. Berlin & Son, Inc. (C.A.D. 1111)

CUSTOMS COURT

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P74/01	Watson, J. May 10, 1974	Zunold Trading Corp.	60/32208, etc.	Item 748.30 28% (Items marked "A" and "B")	Item 774.00 17% (Items marked "A") Item 772.97 17% (Items marked "B")	Armbee Corporation et al. v. U.S. (C.D. 3278); Zun- old Trading Corporation et al. v. U.S. (C.D. 3279) (Items marked "A") (Items marked "B") Agreed statement of facts (Items marked "B")	Wilmington, N.C. Holly sprays (Items marked "A") Christmas ornaments in o.v. of rubber or plastics (Items marked "B")
P74/02	Malek, J. May 20, 1974	Heyman Housewares, Inc.	71-11-01607	Item 208.30 13.9¢ per lb. plus 1½%	Item 208.07 11.5%	Judgment on the pleadings	San Francisco Solid bowls composed of woven wooden veneers bound together with syn- thetic plastic materials formed by heat and pressure
P74/03	Malek, J. May 10, 1974	The Logan Company	71-11-01704	Item 208.30 13.9¢ per lb. plus 1½%	Item 208.07 11.5%	Judgment on the pleadings	San Francisco Solid bowls composed of woven wooden veneers bound together with syn- thetic plastic materials formed by heat and pressure

**Decisions of the United States
Customs Court**

Abstracts

Abstracted Reappraisement Decision

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R74/281	Re J. May 9, 1974	Export Pacific et al.	281051-A, etc.	Export value: Net appraised value less 7½%, net packed	Not stated	U.S. v. Gets Bros. & Co. et al. (C.A.D. 927)	Tacoma (Seattle) Japanese plywood
R74/282	Malets J. May 10, 1974	A & A Trading Corp.	72-9-02039	Constructed value	Listed on schedule, attached to decision and judgment, in column designated "Claimed Values", for such imported article, net packed	Agreed statement of facts	Los Angeles Various radios im- ported together with earphones and batteries and clock radios

R74283	Maleta, J. May 10, 1974	Marine-Lida (America), Inc.	R69/12157	Export value: Invoice unit price, net packed, less ocean freight and marine insurance	Not stated	Agreed statement of facts
R74284	Maleta, J. May 10, 1974	Spiegel, Inc., et al.	71-11-01988, etc.	Constructed value	Unit values set forth in schedule "A", at- tached to decision and judgment, in column @ which is headed "Unit Value for Each Article of Merchandise, Not Packed" Protest #901-1-000776 covering entries listed in schedule B, attach- ed to decision and judgment dismissed for lack of jurisdiction	Judgment on the plead- ings

Judgment of the United States Customs Court
inAppealed Case

MAY 10, 1974

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